United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/926
30 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 926

Case No. 1001: AL ANSARI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharajan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Nabil Ra'ouf Al Ansari, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998, the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 January 1998, the Applicant filed an application requesting the Tribunal to order:

"i. [That the] decision [to terminate his appointment] in the interest of the Agency [be rescinded].

ii. [That the] Applicant [be reinstated] to duty effective the date of [his] suspension, and [that] the period of his cessation [be considered], as a special leave

with full pay plus due interest.

iii. [That] should [the] Respondent refrain from reinstating [the] Applicant, [the Respondent is to] compensate him for his due salaries until a judgement has been ordered, plus a compensation for the severe injury caused to [the] Applicant, to be paid in US dollars at the rate available to UN [staff] at the time of his separation.

iv. [That the Applicant be paid] counseling fees and secretarial expenses estimated at US $1,500."

Whereas the Respondent filed his answer on 3 June 1998;

Whereas the Applicant filed written observations on 27 August 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 11 August 1982, on a temporary indefinite appointment as Assistant Field Personnel Officer, in the Syrian Field Office. Effective 1 October 1986, the Applicant was transferred to the post of Deputy Field Relief Services Officer, and on 9 November 1993, the title of his post was changed to Deputy Chief, Field Relief and Social Services Programme (D/CFRSSP). In a letter dated 4 May 1995 to the Director of Relief and Social Services, Headquarters, Vienna, from the Chief, Field Relief and Social Services Programme (C/FRSSP), a division of responsibilities between the D/CFRSSP, and the C/FRSSP was confirmed. The D/CFRSSP would be responsible for the day to day running of the Department. On 7 February 1995, in a letter from the Director of UNRWA Affairs to the Deputy Director of Administration and Human Resources, UNOV, the D/CFRSSP's duties were spelled out to include "special responsibility in the supervision of the Eligibility and Registration Division and the Special Hardship Programme."

On 19 April 1995, at the request of the C/FRSSP, the Applicant and two other staff members prepared a report detailing a number of irregularities with the Special Hardship Programme (SHP) in the South Area, Syrian Arab Republic (SAR). They recommended that a board of inquiry look into the behaviour of the Area Relief and Social Services Officer

(ARSSO). On 24 April 1995, the Deputy Field Supply & Transport Officer, SAR, reported details of his investigation into the reasons for substantial shortages in commodities after completing a distribution cycle in March/April 1995.

On 25 April 1995, following these reports, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status (SHS) to Palestine Refugees in Dera'a and the procedures of UNRWA's distribution system.

On 21 May 1995, after hearing 70 hours of testimony, the BOI submitted a detailed report to the Director. The BOI concentrated its efforts on ascertaining who was responsible for the shortage in commodities at Dera'a and whether the shortage was in any way linked to procedures of according SHS to refugees. The BOI discovered that there was a link between the two matters, principally because of the disorder in procedures and the lack of internal controls leading up to granting of SHS and the notification thereof to the beneficiaries, as well the lack of supervision in this process.

The BOI noted a number of irregularities: some beneficiaries were not notified until months later that they had been granted SHS. Special Hardship Case (SHC) rolls contained the names of some 400 refugees whose dates of birth were in the 19th century and very early in the 20th century, implying that deceased beneficiaries were kept on the rolls so their rations could be sold off for personal gain. Failure to update the distribution lists by computer allowed substantial thefts of rations to occur. Failure by the responsible staff (in particular, the Registration Clerk (RC) and the ARSSO) to register all new SHC and to distribute the proper ration cards led to the distribution of rations to individuals not entitled to them. In addition, the BOI noted that close personal relationships between Field Office staff and certain staff at the South Area allowed improprieties to go unnoticed.

The BOI was of the opinion that carelessness in following basic office procedures, the non-observance of Agency Regulations and Rules, and a total lack of supervision of staff

both from the Field Office and particularly from the Area Officer, South, created a perfect climate of confusion which allowed abuse of the distribution system. That confusion permitted wholesale fraud with staff taking rations for personal gain, converting them to cash by selling them to merchants and apparently giving and/or selling them to other staff. Also, the BOI found that the reporting lines in the Department of Relief and Social Services (especially between the ARSSO and the Field Eligibility and Registration Officer, the Field Welfare Officer, the RC and others) were very blurred.

In general, the overall picture of the South Area, as viewed by the BOI, was one of rampant and pervasive dishonesty and deviousness, among the entire staff. It described a fair characterization of the staff as those who participated in the dishonesty and those who were aware of it. The BOI noted that this was how the Agency's operations were perceived by the refugees also.

The BOI noted that the Applicant insisted on using a local blue ration card with coupons attached and no serial number for SHC rations instead of the SHC index card specified in Relief Services Instruction No. I/94, Annex E. It noted with even deeper concern that of all of the witnesses called by the BOI, and all the people familiar with the case, the Applicant was the only person who could not find any fault in the performance of the RC in Dera'a .

On 31 May 1995, the Director of UNRWA Affairs informed the Applicant that it had come to the Agency's attention that he may be guilty of misconduct or serious misconduct in connection with a scheme which allowed for the misappropriation of Agency commodities destined for SHC. He further advised the Applicant that effective close of business that day, he was suspended from duty without pay, in accordance with the provisions of staff rule 110.2, pending the outcome of investigations into the charge.

By letter dated 4 June 1995, the Applicant requested the Director of UNRWA Affairs amongst other things, to reverse the decision to suspend him without pay. The Director of UNRWA Affairs responded on 11 June 1995, stating that he had reviewed the circumstances

of the Applicant's case and had found that the decision to suspend him was fully justified and implemented in accordance with Agency procedures and would therefore be maintained.

In early July 1995, the BOI submitted to the Director of UNRWA Affairs Annex 1 to its report of 21 May 1995. With respect to the Applicant this document states that the BOI found him to be "the most singular proponent of the use of the LBRC [local blue ration card] and coupon systems in the Relief Department based on his own testimony and that of many others ..." The BOI was also critical of the Applicant's earlier investigation of the ARSSO in connection with SHC. Noting that the Applicant failed to look into the RC whom it found to be a central figure in misappropriation of commodities and fraud and that the Applicant was the ultimate supervisor of the Registration Division, the BOI found his investigation to be "more of a white wash than a true investigation". The BOI further noted that the Applicant had been expressly delegated to handle the SHP. It was of the opinion that the Applicant, although not responsible for organizing the scheme, was completely remiss in his duties for allowing it to continue so long and for failing to uncover it over the years.

On 25 June 1995, the Director of UNRWA Affairs wrote a letter to the Applicant. He referred to the irregularities found by the BOI in the South Area and the Central Area. He stated that in light of the Applicant's central role in the management of the Registration Division as well as the SHP, the Applicant's long association with the Relief and Social Services Department, and the fact that the fraudulent scheme had a very long history, he had decided that the Applicant's conduct constituted gross negligence. Therefore, he said he had lost faith in the Applicant's ability to perform his duties. The Director cited the Applicant's continued use of the local blue ration cards and his failure to adhere to the Relief Services Instruction which required the Department to use the plastic ration cards from Headquarters. He consequently terminated the Applicant in the interest of the Agency under staff regulation 9.1 and Area staff rule 109.1 effective close of business that day.

On 12 July 1995, the Applicant wrote to the Director of UNRWA Affairs, requesting reversal of the decisions to suspend him and to terminate him, decisions which he alleged were arbitrary. On 20 August 1995, the Director informed the Applicant that he had reviewed the decision in his case and was satisfied that there was no reason to change it.

On 30 August 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB transmitted its report to the Commissioner-General on 19 January 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"**EVALUATION AND JUDGEMENT**

16. In its deliberations, the Board examined all documents made available to it including the Appellant's personal file, and came out with the following:

A. By reference to the appeal, the Board noted that the Appellant's contention that his problem with the Agency was affected by misleading information.

B. The Board of Inquiry interviewed the Appellant on 20 June 1995. The Board here notes that it was not possible to find any written authorization to expand the investigation of the Board of Inquiry to the Field Office Staff after it submitted its report on 21 May 1995.

On the contrary, the same Chairman and members of the Board of Inquiry, were requested officially to form a Board of Inquiry to investigate the situation in Central Area, (DUA, SAR Strictly Confidential A/P/INQ of 1 June 1995).

C. The Director in his strictly confidential letter of 25 June 1995, informed the Appellant of the following charges:

1. The Appellant being 'the responsible Senior Member for the Registration Division, as well as the Special Hardship Cases Programme and as such ultimately and exclusively controlled the entry of monthly data into the computer, on Special Hardship Cases, distribution lists before and after distribution and all other registration functions'.

2. The Appellant's insistence on using the Local Blue Ration Card for distribution and thereby failing to adhere to the Relief Services Instructions.

On the basis of the above, the Director decided that the Appellant's conduct constituted gross negligence, and the Appellant's appointment was terminated in the interest of the Agency.

D. Following consultations with the representative of the Relief & Social Services Department HQ Amman on 19 January 1997, the Board notes that the overall responsibility of the Relief & Social Services Programme is vested in the Chief Field Relief & Social Services Programme who should be considered 'the responsible Senior Staff Member' for all divisions of the department whereas the FERO [Field Eligibility and Registration Officer] is specifically responsible for the Registration Division and the Field Welfare Officer responsible for the Special Hardship Cases Programme.

The Board also noted paragraph 3.7 of the Board of Inquiry's report dated 21 May 1995, which states 'the Board of Inquiry determined that the reporting lines under the present organization of the Department of Relief & Social Services are very blurred'.

E. The Board was astonished to establish that the Chief, Field Relief and Social Services Programme's opinion was not sought by the Board of Inquiry.

F. The Board also notes that the Board of Inquiry relied heavily on rumour, hearsay, and allegations, which were not substantiated. Examples are found in the Board of Inquiry's report and in what were termed as Annexes.

G. The Board is convinced that the use of the Local Blue Ration Cards was in conjunction with and not instead of the standard Agency card for Special Hardship Cases. Obviously this was intended as an extra control measure, which could fail or succeed, and of which the Chief, Field Relief & Social Services Programme must have been aware.

H. The Board has noted that in the Board of Inquiry's report, there was mention of 'a considerable amount of external [interference] in the Agency's programmes, by local authorities including the military, security and GAPAR [Governmental General Authority for Palestinian Refugees]' (...). However,

the Board notes with concern that the Board of Inquiry has relied on GAPAR as a source of information and reference. Many examples are found in the Board of Inquiry's report and Annexes.

J. By reference to the Appellant's personal file, the Board noted that there were no Periodic Reports available therein. However, the Board took note of the Appellant's satisfactory performance in the only two periodic Reports available in the Board's documents:

1. The comments of Field Relief and Social Services Officer, on the Appellant's Periodic Report of 31 December 1991, read that 'plans and controls the budget well resourceful and efficient ...'

2. The comments of the Director of UNRWA Affairs, on the Appellant's Periodic Report of December 1993, read 'has a good grasp of the various programmes and related procedures'.

The Board therefore, finds that there is inconsistency in the Administration's assessment of the Appellant's conduct.

D. The Board therefore, resolved that based on the evidence produced, there are so many doubts about the involvement of the Appellant in the act of misappropriation of Agency commodities destined for Special Hardship Cases.

IV. **RECOMMENDATION**

18. In view of the foregoing, and without prejudice to any party, the Board unanimously makes its recommendation, that the Administration's decision to terminate the Appellant's services in the interest of the Agency pursuant to Area staff regulation 9.1 be reviewed with a view to reinstating the Appellant in his previous position with the Agency."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"I enclose herewith a copy of the report of the Area Staff Joint Appeals Board, submitted to me under cover of a memorandum dated 19 January 1997, on your

appeal. I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the Board of Inquiry had no authority to continue its investigation into Field Office staff after it had submitted its main report. The Board made its own inquiries as to the overall responsibility for the Special Hardship Case Programme and the ration cards and believed that the C/FRSSP and not the Deputy (such as you) had that responsibility. Further, the Board believed that much of the evidence upon which the Board of Inquiry proceeded was rumour and hearsay. Finally, it was concerned about GAPAR being a source of information for the Board of Inquiry. The Board concluded that there was doubt about your involvement in the misappropriation of commodities and recommended that the decision to terminate your appointment be reviewed and reversed.

Contrary to the Board's statement, the Board of Inquiry had full authority to extend its investigation into the Field Office. In relation to the issue of overall responsibility for the operations that were affected by widespread fraud, the Joint Appeals Board has ignored your own testimony in which you stated that these were matters within your own responsibility. Further, I cannot accept the Joint Appeals Board's dismissal of evidence, as it failed to identify which evidence it believed was untrustworthy. Although I agree with the Board that there was no evidence that you were involved in the misappropriation of rations, this was not the finding of the Board of Inquiry nor was it the basis for the termination of your services. Your services were terminated in the interest of the Agency because your poor management of the Special Hardship Programme and the Registration Division constituted gross negligence. Accordingly, I reject the conclusions and recommendation of the Joint Appeals Board and I dismiss your appeal."

On 7 January 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to suspend the Applicant without pay was arbitrary because it amounted to a finding of guilt presupposing that there had been an investigation where misconduct was established.

2. The Respondent's decision to terminate the Applicant was arbitrary because he was not negligent in the performance of his duties and he was not responsible for

managing the SHP or the Registration Division.

3. The investigations by the BOI which were basis for the decision to terminate the Applicant's appointment, were tainted by prejudice, bias and influenced by extraneous factors.

Whereas the Respondent's principal contentions are:

1. The Applicant had primary responsibility for the SHP and the decisions to suspend the Applicant without pay and subsequently to terminate him were within the Respondent's discretion.

2. The Applicant has not provided any evidence to prove that the Respondent's decisions were motivated by prejudice or influenced by other extraneous factors.

The Tribunal, having deliberated from 5 to 30 July 1999, now pronounces the following judgement:

I. The Tribunal's task has not been made easy by virtue of the contents of the application. The case is shrouded in an atmosphere of sometimes bizarre and almost inevitably unsubstantiated allegations made against persons who were concerned with the investigation of the Applicant in the performance of his work which have never been tried or tested. The atmosphere has further been clouded by vague, unsubstantiated allegations of misconduct, ineligibility and prejudice against persons who were concerned with the original investigations carried out by the BOI. Furthermore, the submissions contain denials or assertions of untruthfulness in relation to certain findings of the BOI which were supported by the Applicant's own evidence given before it and denials in the face of what had previously been asserted by the Applicant to be facts. For instance, the Applicant now denies that he had

a special responsibility for the operations which were being investigated by the BOI when on two separate occasions he had given evidence that he had this very responsibility, first on 15 May 1995 and again, after he had been suspended from duty, on 20 June 1995.

II. On 19 April 1995, at the request of C/FRSSP, the Applicant and two other staff members prepared a report detailing a number of irregularities with the SHP in the South Area. They recommended that a board of inquiry look into the behaviour of the ARSSO. On 24 April 1995, the D puty Field Supply and Transport Officer reported details of his investigation concerning substantial shortages in commodities after a distribution in Dera'a.

III. Following receipt of the reports referred to above, the Director of UNRWA Affairs, SAR, convened a BOI on 25 April 1995, which was instructed to examine the procedures for according SHS to Palestine refugees in Dera'a and the procedures of UNRWA's distribution system. The Tribunal, having considered the record in this case, is satisfied that an exhaustive and careful investigation was carried out by that BOI. The BOI found that the South Area was a picture of "rampant and pervasive dishonesty and deviousness which reached across the entire spectrum of staff" and found that an identified official who was controlling all distribution of rations in that area had by various means been siphoning off commodities earmarked for distribution, for some time. It also found that other officials had been either grossly negligent or careless in the performance of their respective duties.

IV. The BOI also ascertained that there was insufficient supervision of the SHP and it noted with concern that the Applicant had insisted on the use of local blue ration cards instead of the SHC index cards which were less amenable to misuse. It also noted that the Applicant in his own inquiry had found no fault with the performance of a particular official whom the BOI found to have been the main perpetrator of the misapplication of supplies and of fraud.

V. After considering the BOI's report, on 31 May 1995, the Director of UNRWA Affairs informed the Applicant that it had come to the Agency's attention that he might be guilty of misconduct or serious misconduct, in that it appeared he was involved in a scheme that allowed for the misappropriation of the Agency's commodities destined for SHC and he was advised that an investigation of this charge was being made and pending the outcome of this investigation, he was suspended from duty without pay, effective close of business on that day.

VI. Exception is taken by the Applicant in his application to that suspension. The Applicant's argument presupposes that there had been an investigation whereby misconduct had been established on the part of the Applicant. The power of suspension is dealt with in Area staff rule 110.2, which provides that "if a charge of misconduct is made against a staff member ... and the Commissioner-General considers that the charge is 'prima facie' well-founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, then the staff member may be suspended from duty, with or without pay, pending investigation, the suspension being without prejudice to the rights of the staff member". The Tribunal is satisfied that there was sufficient information before the Director to entitle him to have considered that the charge made against the Applicant was prima facie well-founded and is accordingly satisfied that the said suspension was lawful.

VII. In Annex 1 to its original report, the BOI found that the Applicant was a prominent proponent of the local blue ration cards, despite the fact that the use of these cards had facilitated fraud. It also found that the Applicant's earlier investigation of irregularities in which he had found no fault with the role played by the RC was a mere whitewash as it did not consider the role of the RC, whom the BOI found to be a central figure in the

misappropriation of commodities and in the perpetration of fraud. The BOI further found that the Applicant was the ultimate supervisor of the Registration Division and had been expressly delegated to handle the SHP. It concluded that if the Applicant was not responsible for organizing the scheme whereby there had been fraudulent manipulation of the special hardship cases and rations in the South and Central Areas "he was extremely remiss in his duties for allowing it to continue for so long and for failing to uncover it over the years".

VIII. On 25 June 1995, the Director of UNRWA advised the Applicant that his conduct as found by the BOI, constituted gross negligence and that he had lost faith in the Applicant's ability to perform his duties and had therefore decided to terminate the Applicant's appointment in the interest of the Agency.

IX. The Tribunal is satisfied that the findings of the BOI upon which the Respondent relied when he decided to terminate the Applicant's appointment in the interest of the Agency were findings of gross negligence which amounted to wilful misconduct or irresponsible conduct or a wilful failure to perform his duties as distinct from finding of mere inefficient or inadequate performance resulting from innate inefficiency or incapacity or the like. In the circumstances, whilst the Tribunal is satisfied that the decision was in the nature of a disciplinary measure, it was justified and accordingly did not constitute an abuse of power by the Respondent.

X. On 30 August 1995, the Applicant appealed to the JAB. The JAB was of the opinion that the BOI had no authority to continue its investigation into Field Office staff after it had submitted its main report. The Tribunal is satisfied that this finding resulted from a misconstruction or misunderstanding by the JAB as to the terms of reference of the BOI and/or as to the manner in which it had gone about its investigation and submitted its report.

The BOI, having taken evidence about and reported upon the operation of the SHP in the South Area, then moved the focus of its inquiries to the Field Office in Damascus. The Tribunal is satisfied that this was not "an expansion" of the BOI's terms of reference as was held by the JAB, but was a change of location required to complete the BOI's mandate "to examine the procedures for according special hardship status in Dera'a as well as the procedures in the distribution system."

XI. The BOI had interviewed and required the Applicant to give evidence before it on two occasions, firstly as a witness when the initial investigation was taking place and secondly as a suspect, after he had been suspended from duty. The Tribunal is satisfied from the record that he was given details of the matters under investigation, that he was confronted with the allegations insofar as they concerned him and that he was given ample opportunity to fully state his position and that he was afforded due process.

XII. The Applicant submits that the findings of the BOI were flawed both by reasons of a want of evidence to support its findings insofar and by virtue of the BOI having been tainted by improper motive or prejudice. The Tribunal finds that there was cogent and persuasive evidence before the BOI which amply justified its findings with respect to the Applicant. The Tribunal has found no evidence of bias, prejudice or any improper motive on the part of the BOI.

XIII. The Applicant claims malevolent interference in the affairs of the Agency in Syria by the General Authority for Palestine Refugees which he maintains is linked to an unidentified and mysterious "outside faction". He claims that this "outside faction" is said to be able to place its members into key posts in the Agency and dominate the Area Staff Union. It is alleged that it formed "Shadow Committees" and instigated the mass termination of staff,

including the Applicant, by providing false witnesses, intimidating staff members and influencing senior officials of UNRWA. There is also an allegation of an "outside politico-professional board" or "bureau" involved in this process. The Respondent claims that he is unable to respond properly to these vague and unspecified allegations which were made without any supporting evidence. Only two members of the "outside faction" were identified (and then only by mere assertion) and other members of the "politico-professional board" remained anonymous. The alleged motives of these bodies to bring about the termination of the services of a number of staff members were never explained. The Tribunal finds that these vague and bizarre allegations have not been substantiated and cannot be acted upon by the Tribunal.

XIV. The Applicant further alleges that he could not have been negligent in the conduct of his duties and responsibilities regarding the SHP because it was he who uncovered the fraud in the South Area. The Tribunal finds that the Applicant is being somewhat disingenuous in taking credit for initiating the investigation, which he and two other staff members were in fact requested by his superior to undertake. The Tribunal furthermore notes that the BOI properly concluded that the investigation was in effect a whitewash and that, in fact, the Applicant's investigation was so superficial in its approach that it was further evidence that the Applicant was remiss in the performance of his managerial duties. The Tribunal is satisfied that this point is well taken.

XV. The Applicant now asserts that he was not the Manager of the SHP. This is contradicted by a letter from the Director of UNRWA Affairs dated 7 February 1995 to UNOV which refers to the express delegation of this responsibility to the Applicant and the appropriate reasons for this delegation, namely to allow the C/FRSSP, to concentrate on the development programme. Further, the Applicant himself testified before the BOI that he had special responsibility for the SHP.

XVI. The JAB rejected the BOI's findings. The JAB found, based on the evidence produced, that there were many doubts about the involvement of the Applicant in the act of misappropriation of the Agency commodities destined for SHC. It recommended that the Administration's decision to terminate the Applicant's services in the interest of the Agency be reviewed with a view to reinstating the Applicant in his previous position with the Agency.

In the opinion of the Tribunal, the findings of the JAB were misconceived. The decision to terminate the Applicant's services in the interests of the Agency had been made on the conclusion of the Respondent that the Applicant had been guilty not of misappropriation but of gross negligence in the supervision and the administration of the SHP. The Tribunal is further satisfied that the finding of the JAB that the Applicant was not vested with the overall responsibility for the Relief and Social Services Programme was contrary to the Applicant's own evidence and was unwarranted. The Tribunal is also satisfied that this finding was made in circumstances where the evidence clearly established that the express delegation of that very responsibility had been made to the Applicant. The JAB's emphasis on the BOI's determination "that the reporting lines under the present organisation of the Department of Relief and Social Services are very blurred" had no application insofar as the Applicant was concerned, as all of the evidence clearly established that he had the responsibility which they found him not to have had.

The Tribunal finds that the JAB's criticism of the BOI of "having relied heavily on rumours, hearsay and allegations which were not substantiated" is not a fair or valid criticism of the investigations carried out by the BOI as its inquiries were in the main of a generalised nature so that the evidence taken had of necessity likewise to be of a generalised sort. The Tribunal also finds that there was ample evidence for the BOI find that the Applicant was at fault and to justify the criticisms that the BOI made of the Applicant's failure to discharge his supervisory duties. The Tribunal notes that the JAB failed to identify the evidence which they believed was untrustworthy or to state the reasons for so finding. The Tribunal is satisfied that the general finding made by the BOI critical of the Applicant was made by the body pre-

eminently suited to making those findings in that it was the BOI which had heard all of the witnesses and could judge their demeanour and attitude.

XVII. The Applicant bears the onus of showing that the administrative decision that he challenges is substantively or procedurally defective or vitiated by some other factor such as bias or prejudice. The Tribunal is satisfied that the decision was based on the conclusions reasonably drawn by the Respondent from the report of the BOI and that the Applicant has failed to demonstrate any substantive or procedural defect, bias or prejudice, either on the part of the BOI or on the part of the Respondent.

XVIII. The Applicant argues that the Respondent's findings that he had been guilty of gross negligence had no foundation, claiming that gross negligence is measured by the damage the negligence has caused or by the intention of the actor found to have been guilty of such negligence. The Tribunal is satisfied that the Applicant's definition of "gross negligence" is erroneous. As the Tribunal stated in Judgement No. 742, Manson, para. XIV (1995), "[g]ross negligence invokes an extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk." It was reasonable for the Respondent to conclude that the Applicant's conduct had fallen well below a standard of care which was expected of him in the supervising of the SHP and that he had failed to observe or to report upon gross abuses which were taking place therein or to take remedial steps to eliminate or reduce those abuses. The BOI's finding that the initial report carried out by the Applicant was in effect a whitewash is in the opinion of the Tribunal clearly justified and further demonstrates gross negligence on the Applicant's part. The Applicant's willingness to allow the use of local blue ration cards instead of the appropriate SHC index cards which were less vulnerable to abuse clearly indicated a recklessness and a high degree of negligence. The Tribunal is fully satisfied that the findings of the Respondent that the Applicant had been guilty of gross negligence were clearly justified so that the decision to terminate his services "in the interests

of the Agency" was taken in the proper exercise of the Respondent's power to impose a disciplinary sanction and was clearly lawful.

XXI. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/927
30 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 927

Case No. 1005: ABDUL HALIM ET AL.

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Ghassan Mahmoud Abdul Halim, Mahmoud Mohammed Najia and Immadiddin Shafiq Husary, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 5 February 1998, the Applicants filed an application requesting the Tribunal to order:

"a. Rescinding [the] decisions of the Commissioner-General, and ordering their reinstatement to duty.

b. Considering [the] period of cessation a special leave with full pay.

c. [Compensating them] for injury sustained, including libel and slander ... by Respondent.

d. [That] should Respondent refrain from reinstating Applicants, [he is to pay them their] salaries plus interest until the date of enforcement of judgement.

e. [That the Applicants be paid] secretarial and counseling fees."

Whereas the Respondent filed his answer on 30 July 1998;

Whereas the Applicant filed written observations on 20 April 1999;

Whereas the facts in the case are as follows:

The Applicant Abdul Halim entered the service of the Agency, on 1 November 1984, on a temporary indefinite appointment as an Area staff member in the Technical Department of the Lebanon Field Office, as a Technical Administrative Assistant. On 11 April 1994, he was reassigned from the post of Construction Engineer to that of Assistant Field Technical Officer.

The Applicant Najia entered the service of the Agency on 1 July 1992, on a temporary indefinite appointment as an Area staff member in the Technical Department of the Lebanon Field Office, as an Office Engineer, at the grade 13 level. Effective 1 July 1993, he was promoted to the full grade of the post (grade 14).

On 21 June 1993, the Applicant Husary entered into the service of the Agency, on a temporary indefinite appointment as an Area staff member in the Lebanon Field Office, as a Maintenance Engineer. On 11 April 1994, he was reassigned to the post of Construction Engineer at the Technical Department of the same office.

On 2 September 1995, an article appeared in the Lebanese newspaper *Ad-Diyar* in which it was alleged that staff in UNRWA's Technical Department in Lebanon had received

bribes from contractors. Following publication of this article, the Director of UNRWA Affairs, Lebanon (DUAL), contacted one of the contractors named therein and met with him on 6 September 1995 to discuss the allegation that he had paid bribes to members of the Technical Department. Another meeting took place on 13 September 1995.

On 18 September 1995, the DUAL convened a board of inquiry (BOI) to look into allegations of misappropriation of Agency funds and non-adherence to Agency rules and regulations by the three Applicants. On that day, the DUAL informed each of the Applicants that a charge of serious misconduct had been made against him and that he was suspended without pay pending an investigation of the charges.

On 28 September 1995, the Applicant Abdul Halim wrote to the DUAL seeking a speedy conclusion to the investigation and requested that his suspension from duty without pay be converted into suspension from duty with pay.

On 26 September 1995, the Applicants Najia and Husary each wrote to the DUAL and requested amongst other things, that a speedy conclusion be reached to the investigation and that their suspension without pay be converted to suspension from duty with pay. On 3 October 1995, the DUAL informed each of the three Applicants, "because of the seriousness of the matter being investigated ... [he confirmed] that [he was] suspended without pay pending the final report of the [BOI]."

On 25 October 1995, the BOI submitted its report to the DUAL. The BOI found that since at least 1983, certain staff in the Technical Department had created a "cartel" among contractors and used to distribute UNRWA projects among these contractors. "Authority" to add and/or remove contractors from the list was allegedly vested in Applicant Abdul Halim's and Applicant Najia's hands. The BOI found that "such authority was known to all contractors and threats of removing names of contractors was exercised to insure adherence of the contractors to the extortions exercised by the 'mafia'." By disclosing the Agency's estimate for projects and the total funds available, a contractor would be selected in advance and advised what to submit to the Agency in its tender. The staff members involved would then receive a percentage of the total value of each project.

The Applicant Abdul Halim

The BOI found indications that the Applicant Abdul Halim had received bribes from a contractor, on one project alone amounting to $50,000. It received testimony, documentation and a tape recording allegedly of the Applicant discussing bribes. The BOI also found that he had tried, through an intermediary, to buy the tapes from the contractor. It stated: "Having carefully weighed the evidence ... the [BOI] unanimously concludes that [Applicant Abdul Halim] is guilty of having accepted bribes ..."

On 7 December 1995, the DUAL advised the Applicant of the conclusions of the BOI. The DUAL stated that the BOI's finding that he had accepted bribes constituted serious misconduct and, accordingly, he was summarily dismissed, effective the date of his suspension from duty.

On 2 January 1996, the Applicant wrote to the DUAL and sought reversal of the decision to dismiss him summarily. On 5 February 1996, the DUAL advised the Applicant that his decision stood.

On 12 February 1996, the Applicant Abdul Halim lodged an appeal with the Joint Appeals Board (JAB).

The JAB transmitted its report to the Commissioner-General on 3 March 1997. Its evaluation, judgement, recommendation and dissenting opinion read as follows:

"**III. EVALUATION AND JUDGEMENT**

21. In its deliberations, the Board considered all documents cited before it, including the Appellant's personal file, and came out with the following:

(a) The Board noted that the Administration's decision to summarily dismiss the Appellant was based on the findings of the Board of Inquiry as stated in its report submitted on 25 October 1995.

(b) The said report established the involvement of the Appellant in accepting bribes.

(c) By reference to the report of the Board of Inquiry dated 25 October 1995, the Board noted that based on the statements heard (including that of the Appellant) and the documents considered the Board of Inquiry found out the following:

1. The Appellant admitted in his statement that the voice on the tape was actually his and subsequently the conversation about money with the contractor was true.

2. The Board noted that the relationship between the contractor ... and the Appellant was obviously more than a business relationship, it exceeded to the point were they were negotiating money in the Appellant's house and after work hours.

3. The Board also noted that the Appellant stated that he does not know the contractor well, but he knew him well enough to visit him at home.

The Board also found that the Appellant failed to produce any counter productive evidence.

(d) Based on the above the Board could not establish that the Administration's decision has been biased or improperly motivated against the Appellant.

IV. RECOMMENDATION

22. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Appellant may deem pertinent, the Board by majority vote makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed.

V. DISSENTING OPINION OF BOARD MEMBER ...

I make my reservations regarding the Board of Inquiry's evidence:

(a) It based its findings on a tape which can be easily forged.

(b) It based its findings on the statement of one contractor which is ... against the statement of the Appellant, while there were other statements of other contractors not taken for granted.

> Based on the above findings, I recommended that the administrative decision appealed against be reversed."

On 9 April 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Abdul Halim and informed him as follows:

> "... I have carefully reviewed the Board's report and noted its conclusions. A majority of the Board considered the evidence against you and was of the opinion that the Board of Inquiry report correctly established that you had accepted bribes. In the absence of any evidence that the decision to dismiss you summarily was taken as the result of bias or any other improper motivation, the majority recommended that your appeal be dismissed. One Board member dissented on the ground that a cassette recording can be fabricated and that the Board of Inquiry's conclusions were based on the evidence of one contractor alone.
>
> I accept the conclusions and recommendation of the majority of the Board and I accordingly dismiss your appeal."

The Applicant Najia

In its report of 25 October 1995, the BOI stated that there was no direct evidence of any contractor having paid any funds to the Applicant Najia. The BOI however, noted an allegation by one contractor who stated that he had once complained to the Applicant Najia about the large percentage in payoffs that the contractor was having to make. The contractor reported that the Applicant Najia instructed him to "talk to [Applicant Abdul Halim] he is in front of you (next office); talk to him directly". The report records that the Applicant Najia denies that such a conversation ever took place.

The BOI was of the opinion that the contractor's testimony "as regards other accused stood the test of comparison" and therefore found it "difficult to believe that [Applicant Najia] was not aware of what was going on. Still with lingering doubts the BOI conclude[d] that no firm evidence ha[d] been presented against [Applicant Najia]".

On 15 January 1996, the DUAL wrote to the Applicant Najia and stated that the BOI was "clearly not satisfied with your role in the events being inquired into, as you described it

and I share their misgivings. The fact that such wrongdoing was being perpetrated and you did not report it constitutes a serious shortfall in the standard of behaviour which should be expected of an UNRWA staff member. This has led me to lose confidence in your ability to continue in your position as Office Engineer". The DUAL stated that therefore he had decided to transfer the Applicant to the grade 10 position of Administrative Assistant in the Printing Services Office, with salary protection at his then grade 14 level.

By letter dated 12 February 1996, the Applicant Najia requested the DUAL to reverse the decision to transfer him calling it a transfer on demotion. The DUAL replied on 14 February 1995, informing the Applicant that he had reviewed the decision to transfer him and it would be maintained. On 12 March 1996, the Applicant Najia lodged an appeal with the JAB.

On 30 May 1996, the Field Personnel Officer informed the Applicant Najia that his post would be abolished as from 30 June 1996. On 14 October 1996, the Applicant was informed that effective that day, he would be reassigned to the newly established fixed-term supernumerary post of Administrative Assistant, at the grade 10 level, which would expire 13 August 1999, with no change in grade or salary.

On 11 November 1996, the Applicant Najia wrote to the Field Personnel Officer and requested to be maintained in his present employment category which was of a temporary indefinite basis. He also requested reinstatement to the post of Office Engineer. The Field Administration Officer (FAO) replied to the Applicant on 19 November 1996 stating that "although [he was] transferred to a fixed term post ... [his] employment status remain[ed] on a temporary indefinite basis." If the fixed term post that he currently occupied expired, then he would be reassigned to another vacant post. The Applicant was advised that unless he reported for duty on 21 November 1996 his appointment would be terminated on grounds of abandonment of post.

On 25 November 1996, the Applicant again wrote to the FAO objecting to his transfer and requesting reinstatement to the post of Office Engineer. On 28 November 1996,

the FAO responded that the post that the Applicant was being transferred to "ha[d] the same occupation group" as the one previously held by [him] while working at the Printing Unit.

On 16 December 1996, the Applicant Najia wrote a memorandum to the FAO seeking transfer to his original post or, in the alternative, termination of his services "on grounds of redundancy without prejudice to [his] appeal ..." On 6 January 1996, the Applicant wrote a letter to the DUAL referring to his previous correspondence with the FAO and requesting that he be immediately terminated on grounds of redundancy without prejudice to his appeal. The Applicant added "[s]hould you have no decision with[in] the forthcoming two days please consider the attached letter of resignation a part and parcel of this letter". On 22 February 1997, the FAO advised the Applicant Najia that his resignation had been accepted effective 20 January 1997.

The JAB transmitted its report to the Commissioner-General on 3 March 1997. Its evaluation, judgement, recommendation and dissenting opinion read as follows:

"**III. EVALUATION AND JUDGEMENT**

22. In its deliberations, the Board examined all documents cited before it, including the Appellant's personal file, and came out with the following:

(A) The Board noted that the Administration's decision to impose disciplinary measures on the Appellant was based on the findings of the Board of Inquiry as stated in its report submitted on 25 October 1995.

(B) The said report established that the Appellant was aware of what was going on and found it difficult to believe the contrary.

(C) The Board also took note of the conversation that he admitted took place with the contractor two days after his suspension did cast some shadow of doubt on the Appellant's behaviour.

The Board also noted that the Appellant failed to produce any counter productive evidence.

In this context, the Board is of the opinion that the Administration has acted within the framework of standing rules and regulations accordingly, the Board

could not establish that the Administration's decision to transfer the Appellant was motivated by prejudice or any other extraneous factors.

IV. RECOMMENDATION

23. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Appellant may deem pertinent, the Board by majority vote makes its recommendation that the administrative decision appealed against be upheld and that the case be dismissed.

V. DISSENTING OPINION OF BOARD MEMBER ...

I make my reservations regarding the findings of the Board of Inquiry in which it established that no firm evidence has been presented against the Appellant.

Furthermore, the said report established that the words of an outside contractor stood the test of comparison against the word of an employee i.e. the Appellant which in my opinion is the one who should be believed.

Based on the above, I cannot accept the findings of the Board of Inquiry. Therefore, I recommend that the administrative decision of transfer by reversed."

On 9 April 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Najia and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. A majority of the Board was of the opinion that the Board of Inquiry had established that you knew of the corrupt scheme operating in your Department and that you had not produced any evidence to the contrary. The majority also opined that the Agency had acted in accordance with the Rules and the decision to transfer you was taken without prejudice or any other extraneous factors. Accordingly, the majority recommended that your appeal be dismissed. One Board member dissented on the ground that no firm evidence had been presented against you and that the Board of Inquiry's conclusion was based on a conversation you had had with a contractor, of which both of you gave conflicting versions. The dissenting member was of the view that in those circumstances, a staff member's version should always be accepted in favour of that of a non-staff member.

I have accepted the view of the majority of the Board because it is consistent with your obligation in the rules to show that the decision under review should be changed or reversed. I do not accept the view of the dissenting member regarding the relative trustworthiness of staff members and non-staff members. Accordingly, I dismiss your appeal."

The Applicant Husary

In its report of 25 October 1995, the BOI stated that "[n]o contractor claims to have paid any funds directly to [Applicant Husary]". However the BOI took note of the allegations of one contractor. Its report says that this contractor "claims that he on one occasion said to [the Applicant] that the percentage [being demanded as bribe] had become high incurring a loss. According to [the contractor], [the Applicant's] reply was 'talk to Ghassan [Applicant Abdul Halim]' ..." The report notes that the Applicant Husary confirmed that the contractor had told him he was paying the Applicant Abdul Halim and that he did not report the incident to his supervisor as he considered it to be "nonsense". The BOI concluded that Applicant Husary should have reported the contractor's statement to the Field Technical Officer (FTO) and it unanimously found that "in not reporting the incident [Applicant Husary] was derelict of duty".

On 7 December 1995, the DUAL informed the Applicant Husary of the BOI's finding. The DUAL stated that in light of those findings he had lost confidence in the Applicant's ability to continue in his position as Construction Engineer, and had therefore decided to terminate the Applicant's appointment in the interest of the Agency, effective the date of the Applicant's suspension from duty.

On 18 December 1995, the Applicant wrote a letter to the DUAL objecting to his termination which he called arbitrary, claiming that the statements were made to him by the contractor in public and not in confidence and the same statements had been published in the press earlier. He therefore requested reversal of the decision to terminate his appointment. The DUAL responded on 19 December 1995 stating that the decision to terminate the Applicant would be maintained.

The Applicant Husary lodged an appeal with the JAB on 2 January 1996. The JAB transmitted its report to the Commissioner-General on 3 March 1997. Its evaluation, judgement and recommendation reads as follows:

"**III. EVALUATION AND JUDGEMENT**

22. In its deliberations, the Board examined all documents cited before it, including the Appellant's personal file, and came out with the following:

(a) The Board noted that the Administration's decision to terminate the Appellant's services in the interest of the Agency under Area staff regulation 9.1, was utterly based on the findings of the report of the Board of Inquiry dated 25 October 1995, in which the Appellant was held responsible for not reporting the incident which he admits took place, where a contractor came to him and informed him that he was paying bribes to another colleague.

(b) Based on the provided evidence and the inquiry conducted, the Board noted that the not reporting an incident does not deserve termination in the interest of the Agency.

(c) By reference to the Appellant's personal file the Board noted that he has a satisfactory performance all through his service with the Agency, which should be taken into consideration.

(d) Based on the above, the Board is of the opinion that the Appellant does not deserve such harsh disciplinary measures.

IV. RECOMMENDATION

23. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Board unanimously makes its recommendation that the administrative decision appealed against be reviewed."

On 9 April 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Husary and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that your failure to report a conversation was not, of itself, a sufficient basis upon which to terminate your services. The Board also noted that your service with the Agency had been satisfactory. Accordingly, the Board recommended that your appeal be upheld and that the administrative decision be reviewed.

Ordinarily, I would agree with the Board's perception as to the consequences of failing to report a conversation; however, the subject matter of the conversation, namely that a staff member was receiving payments from a contractor associated with an UNRWA contract, was of such a nature that it should have prompted you to report the incident so that it could be properly investigated. Your explanation, that you did not take the conversation seriously, has proved to be serious error of judgement as evidenced by the findings of the Board of Inquiry which the Joint Appeals Board has, in relation to two other staff members accepted.

Accordingly, I cannot accept the conclusion and recommendation of the Board and I dismiss your appeal."

On 5 February 1998, the Applicants filed with the Tribunal the application referred to earlier.

Whereas the Applicant Abdul Halim's principal contentions are:

1. The Respondent's decisions to suspend and later to summarily dismiss him, as well as the proceedings of the BOI, were based on bias and prejudice as well as influenced by extraneous factors.

2. The evidence upon which the BOI made its conclusions regarding him was insufficient and he is not guilty of the charges alleged.

Whereas the Applicant Najia's principal contentions are:

1. The proceedings of the BOI, and the Respondent's decision to suspend him without pay were based on bias, prejudice as well as influenced by extraneous factors.

2. The Respondent's decision to transfer him was arbitrary and placed him in a post incommensurate with his qualifications. The said decision and the Respondent's actions thereafter were calculated to leave the Applicant no choice but to resign.

Whereas the Applicant Husary's principal contentions are:

1. The proceedings of the BOI and the Respondent's decision to suspend him without pay were based on bias, prejudice and influenced by extraneous factors .

2. The information he was accused of failing to disclose was already in the public arena when he received it and therefore the Respondent's decision to terminate his services was based solely on prejudice.

Whereas the Respondent's principal contentions are:

1. In the case of each of the Applicants, the decision to suspend him from duty pending the outcome of investigations was a proper exercise of managerial discretion by the Respondent.

2. In the case of the Applicant Abdul Halim, the decision to summarily dismiss him was a proper exercise of managerial discretion based on the findings of the BOI.

3. In the case of the Applicant Husary, the decision to terminate his appointment in the interests of the Agency was a proper exercise of managerial discretion based on the findings of the BOI.

4. The decision to transfer the Applicant Najia was a proper exercise of managerial discretion. The Applicant Najia's resignation was not a *de facto* termination but rather a choice made by him to avoid performing the work assigned to him.

5. None of the Applicants has provided any evidence to prove that the findings of the BOI and the decisions relating to them were based on bias, prejudice or influenced by other extraneous factors.

The Tribunal, having deliberated from 5 to 30 July 1999, now pronounces the following judgement:

I. The Applicants Abdul Halim, Najia and Husary have filed a joint application. Because the three Applicants' cases arise from related facts and raise similar issues, the Tribunal orders joinder of the cases.

Ghassam Mahmoud Abdul Halim

II. The Tribunal's task in relation to this case has not been made any the easier by virtue of the fact that the submission filed on behalf of the Applicant Abdul Halim is shrouded in a haze of unsubstantiated and vague allegations made against other parties, conjecture, selective quotations from documents, and a general "scattergun" attack made against the BOI, the JAB and the Respondent.

III. Effective 1 November 1984, the Applicant Abdul Halim was offered and accepted a temporary indefinite appointment as an area staff member of UNRWA as Technical Administrative Assistant. On 11 April 1994, he was reassigned to the post of Assistant Field Technical Officer.

IV. On 18 September 1995, the DUAL convened a BOI to look into allegations of misappropriation of Agency funds and non-adherence to Agency Regulations and Rules. The Applicant Abdul Halim was informed that a charge of serious misconduct had been made against him and was suspended without pay pending the investigation of the charges. Area staff rule 110.2 provides that if a charge of misconduct or serious misconduct is made against a staff member and the Commissioner-General considers that the charge is "prima facie" well founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interest of the Agency, then the staff member may be suspended from duty, with or without pay, pending investigation, the suspension being without prejudice

to the rights of the staff member. The Tribunal is satisfied that the said decision to suspend the Applicant Abdul Halim was accordingly lawful. The terms of reference of the BOI were: (a) "The accusations made by a Contractor on UNRWA's List of Contractors and the related material presented", (b) "All documents and files of Technical Office to conclude on the misappropriation of Agency funds and non-adherence to Agency Rules and Regulations". It was later agreed to widen the investigation to include the Sanitation Division in the Health Department.

V. In essence two contractors accused the Applicant Abdul Halim of having led a ring or "cartel" which imparted confidential and sensitive information to contractors as to the Agency's estimates for particular projects and the amount of funds available to finance them. Such contractors who received contracts were required to pay commissions based on an agreed percentage of contract values to the Applicant Abdul Halim in return for that information. The main evidence against the Applicant Abdul Halim was the testimony of one of the two contractors, a tape recording (two tapes) furnished by that contractor allegedly containing a recording of conversations between himself and the Applicant Abdul Halim, and the testimony of the other contractor. The first mentioned contractor also claimed that he had been paid through an intermediary an amount of $10,000, alleging that the Applicant was seeking to purchase back from him (the contractor) the tape recording which was ultimately produced before the BOI. In this testimony, the alleged intermediary admitted that he had paid $10,000 to the first mentioned contractor but provided no credible explanation as to why this sum had been paid. The BOI, having indicated that they had carefully weighed the evidence from the written statements, the tape and the interviews, unanimously concluded that the Applicant Abdul Halim was guilty of having accepted bribes from contractors. After hearing the tapes in question the Applicant Abdul Halim is said to have agreed that his voice was on the tapes and that it was "clear in some areas" but he stressed that that did not mean that the conversation was genuine. On the contrary he claimed that the conversations were fabricated, that the tapes had been interfered with and that it would be easy to produce such a

tape from fractions of other conversations. The Applicant Abdul Halim alleges that therefore the tapes at issue were not admissible as evidence.

VI. Whilst the Tribunal recognises that an audio tape can be interfered with, the Tribunal is satisfied that both the BOI and the JAB thoroughly considered the allegation of interference and treated the tape as part of the evidence. The BOI had obviously played the tapes and had heard the Applicant Abdul Halim giving evidence, and thus the BOI was in the position to assess and to form its own views as to when the Applicant Abdul Halim's voice was or was not identifiable. The fact that an audio tape can be subjected to interference or manipulation is not, in the opinion of the Tribunal, a good ground for declining to act on such evidence provided it is properly considered. It is also clear that the BOI did not act on the tape alone but also considered the testimony of the two contractors who had implicated the Applicant Abdul Halim as well as of the alleged intermediary. The BOI took the view that the alleged intermediary's denial that he had ever acted as such, was wholly unsatisfactory. It considered his evidence of having made that payment to be of relevance, as he failed to give any innocent explanation for having done so. The BOI also found that such reasons as were given by him, which did not implicate the Applicant Abdul Halim, were "totally illogical and incomprehensible". The BOI, being unable to understand why this alleged intermediary had made this payment to the contractor, was driven to conclude that the alleged intermediary had in fact acted as a middleman on behalf of the Applicant Abdul Halim in an attempt to retrieve the tapes. The Tribunal is satisfied that this was a reasonable inference to draw from the evidence which entitled the BOI to conclude that the tapes were genuine insofar as they recorded the Applicant Abdul Halim discussing what were in effect bribes.

VII. The BOI's finding that the Applicant Abdul Halim had indeed accepted bribes clearly entitled the Respondent to form the view that he was guilty of serious misconduct and decide that he be summarily dismissed.

VIII. The Applicant Abdul Halim appealed to the JAB. The JAB, by a majority, was of the opinion that the BOI report correctly established that the Applicant Abdul Halim had accepted bribes. One member dissented on the grounds that a cassette recording can be fabricated or interfered with and that the BOI's conclusions were based on the evidence of one contractor alone. It is clear from the report that the BOI's conclusions had in fact been made on the consideration of the entirety of the evidence and not on consideration of the tapes alone. The Tribunal is satisfied that it was reasonable for the Respondent on reviewing the report of the JAB to agree with the recommendations and conclusions of its majority and accordingly to affirm its decision.

Whilst allegations of a vague and generalised nature have been made on behalf of the Applicant Abdul Halim against the procedures followed by the BOI and its reasoning in accepting some evidence at the price of rejecting other evidence, the Tribunal is satisfied that the Applicant Abdul Halim has failed to establish any departure from fair procedures, or bias or prejudice against him or any other extraneous factors which might have precluded either the majority of the JAB or the Tribunal from relying on the findings of the said BOI. Likewise the Tribunal is satisfied that the Applicant Abdul Halim has failed to establish any departure from fair procedures or bias or prejudice against him by the JAB and accordingly the Tribunal is satisfied that the Applicant Abdul Halim has failed to establish any grounds which could negate the findings accepted by the Respondent that he had been guilty of serious misconduct in accepting bribes.

Mahmoud Mohammed Najia

IX. The Applicant Najia, an Office Engineer, was also one of the persons investigated by the BOI. This case involves a direct conflict of evidence, based on one man's word against another's. It was alleged that the Applicant Najia was a member of the "Cartel" allocating projects to contractors after providing them with the Agency's estimate and information regarding the funds available for the project. At the same time, there was no evidence that he had received or accepted any monies. One of the contractors who testified against the

Applicant Abdul Halim claimed that he had complained to the Applicant Najia that the Applicant Abdul Halim was making problems for him. He alleged that the Applicant Najia told him to take up his problems with the Applicant Abdul Halim directly. The Applicant Najia testified that that same contractor had apprised him of a problem between himself and the Applicant Abdul Halim and that he had replied that whatever problem there was between contractor and the Applicant Abdul Halim "was not his problem". Whilst the BOI did not make any finding that the Applicant Najia had participated in corrupt practices or received any bribe it "unanimously [found] it difficult to believe that [the Applicant] Najia was not aware of what was going on. Still with lingering doubts the Board conclude[d] that no firm evidence ha[d] been presented against [the Applicant] Najia".

X. This finding caused the Respondent to lose confidence in the Applicant's ability to continue as Office Engineer. He found that his failure to report the wrongdoings of his colleagues constituted a serious shortfall in the standards of behaviour expected of him and he transferred him to the post of Administrative Assistant in the Printing Unit. Although this was a grade 10 post, whereas his previous post was grade 14 level, he was placed on salary protection at grade 14 level so that the transfer did not result in any economic loss.

XI. The Applicant Najia appealed to the JAB. The majority of the JAB was of the opinion that the BOI had established that the Applicant Najia knew of the corrupt scheme operating in his department, that the Agency had acted in accordance with the rules and that the decision to transfer the Applicant Najia to another post was taken without prejudice or any other extraneous factor and was lawful. Accordingly, the majority of the JAB recommended that his appeal be dismissed.

One Board member dissented on the ground that no firm evidence had been presented against him and that the BOI's conclusions were based on a conversation which was the subject matter of a conflict. The dissenting JAB member preferred the Applicant Najia's version to that of the contractor and accordingly recommended that the decision to transfer the

Applicant Najia be reversed. As he put it in his dissenting opinion "Furthermore, [the Report of the BOI] established that the word of an outside contractor stood the test of comparison against the word of an employee i.e. the Appellant which in my opinion is the one who should be believed". In the view of the Tribunal, this means no more than that the dissenting member preferred the word of the Applicant Najia to the word of the "outside contractor". He did not seek to announce a principle of general application. The Tribunal notes that the Respondent misunderstood or misrepresented the dissenting member's opinion as is evidenced by the letter of the Commissioner-General to the Applicant Najia dated 9 April 1997 where he states: "... The dissenting member was of the view that in those circumstances, a staff member's version should always be accepted in favour of that of a non-staff member."

As indicated, the dissenting member of the JAB did not say that in the circumstances of the case that a staff member's version should always be accepted in favour of that of a non-staff member. However, the Tribunal is of the view that the Commissioner-General was entitled to accept the view of the majority, which he did, and the mere fact that he misunderstood or misrepresented the view of the dissenting member is of no consequence.

XII. On 30 May 1996, the Applicant Najia was informed that the post which he then occupied in the Printing Unit was being abolished with effect from 30 June 1996 and advised that every effort would be made to secure a post for him within the Agency which would suit his qualifications and experience. He was further informed that a failure to secure a post as of the latter date would regretfully result in the termination of his services for redundancy. He sought reinstatement to his previous post as Office Engineer which was still vacant but this was refused as the Respondent had not regained confidence in him. Effective 14 October 1996, he was offered a post of Administrative Assistant, grade 10, that would expire on 13 August 1999, with no change in his grade or salary level. He ultimately declined to take up this post as he considered that it was not commensurate with his qualifications and

was therefore unacceptable. Claiming abuse of authority and discrimination, he argued that the Respondent's actions were in fact an attempt to dismiss him. In the circumstances he resigned with effect from 20 January 1997.

XIII. The Tribunal is satisfied that the Respondent was entitled to take the view that the Applicant Najia should be transferred from the Technical Department to another Unit and the Applicant Najia has failed to establish that there was any bias or prejudice or extraneous influence in arriving at that decision. Likewise, the Tribunal is satisfied that the Applicant Najia's resignation was not procured or made in circumstances that could entitle the Tribunal to find that he was constructively dismissed.

Imadiddin Shafiq Husary

XIV. The Applicant Husary was likewise a subject of the BOI investigation. As earlier noted, the BOI had been convened to look into allegations of misappropriation of agency funds and non-adherence to Agency Regulations and Rules. The DUAL, when writing to the Applicant Husary on 18 September 1995, informed him that a charge of serious misconduct had been made against him and added "Specifically, it is alleged that on several occasions you have misused the Agency's funds".

XV. On 11 April 1994, the Applicant Husary was assigned to the post of Construction Engineer. Again, whilst no specific allegation is made, the submission indicates that this is an appeal against arbitrary suspension without pay and termination of services. It is sufficient to refer once again to Area staff rule 110.2 which has been recited above and to reiterate that the Commissioner-General was entitled to consider the charge as "prima facie" wellfounded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency and, therefore, entitled to suspend the Applicant Husary from duty without pay, pending investigation.

XVI. Throughout the investigation carried on by the BOI no person claimed to have paid any funds directly to the Applicant Husary. The sole finding made by the BOI in relation to the Applicant Husary was that he should have reported the statement by a contractor that he was paying the Applicant Abdul Halim to the FTO and that, in not reporting this incident, the Applicant Husary was in dereliction of duty. This finding arose on the testimony given by the said contractor that he on one occasion told the Applicant Husary that the percentage of the contract value which he was paying to the Applicant Abdul Halim had become high and that he was thereby incurring a loss. The contractor stated that the Applicant Husary had replied "Talk to Ghassan," meaning to the Applicant Abdul Halim. In the course of his testimony, the Applicant Husary explained to the BOI that the said contractor had indeed once told him he was paying the Applicant Abdul Halim and said his reply was "What goes on between you and Ghassan does not concern me". He further explained to the BOI that he had not reported the incident to his supervisors as he considered it to be nonsense. The Tribunal considers it beneficial to quote more precisely from the testimony which had been given by the Applicant Husary to the BOI:

> "...
>
> Question: Asaad Mustafa claims that he came one day to the Technical Department and said to you verbatim, that the percentage demanded of him had become high and he was incurring a loss; your response was to tell him to talk to Ghassan?
>
> Answer: He came once and said to me, verbatim, that he was paying Ghassan. I told him that what goes on between you and Ghassan does not concern me. I told him, if Ghassan really collects from you, he would have asked for my help.
>
> Question: Did you relay this serious talk to your superiors?
>
> Answer: No.
>
> Question: Didn't you feel that this accusation affecte[d] you?

Answer: No, because there is nothing between him and me. There were problems in the work and we solved them.

Question: Don't you think that this serious accusation against a friend in the work should, at the very least, elicit a reaction? Towards the contractor, towards your accused friend, or even towards the Agency's supervising public funds?

Answer: First of all, the actual work was very good. In the terms of protecting UNRWA, no UNRWA funds were washed. For the amount of work he did, he was paid. As to the quality of the work, it was very good. If Ghassan was involved with him, he would have asked me to cover up for his work. But he didn't ask anything of me, and the work was very good. So far as I was concerned his (Asaad's) talk was nonsense.

Question: You took the matter lightly when Asaad told you about Ghassan, which gives the impression that you knew about this (the pay offs). Do you suspect, or are you aware of, other persons in the Technical Department receiving bribes from any contractor?

Answer: Asaad's words cannot be taken seriously. I do not know and I do not suspect anyone in the Technical Department of receiving bribes. Because our work is implemented according to the specifications and to the finest detail.

..."

Accordingly, the Tribunal notes that, whilst the BOI was originally investigating an allegation that the Applicant Husary had misused Agency funds, there was no evidence of such misuse by him and the only finding made against him was one of dereliction of duty in failing to report the conversation which he had had with the contrator concerning his alleged troubles with the Applicant Abdul Halim.

XVII. The DUAL, having considered the report of the BOI, wrote to the Applicant Husary on 7 December 1995, informing him that, in the light of the BOI's finding that he was derelict in his duty in not reporting an incident, he had lost confidence in his ability to continue in his

position as Construction Engineer. He had therefore decided with regret that he had no alternative but to terminate his appointment in the interest of the Agency under the provisions of Area staff regulation 9.1, effective the date of his suspension from duty. It should be pointed out that in that letter he selectively quoted from the evidence which had been heard by the BOI. He quoted merely the fact that, when approached by a contractor who had told him in effect that he was paying bribes to the Applicant Abdul Halim, his reply was "What goes on between you and Ghassan does not concern me". He failed to quote what the Applicant Husary had said thereafter, namely that he did not believe that bribes were being paid and that he considered that the contractor's allegation was nonsense. This omission may have some significance in determining the attitude of the DUAL towards the Applicant Husary and towards the findings of the BOI.

XVIII. Whilst Area staff regulation 9.1 does provide that "the Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency", it should be read in conjunction with personnel directive A/10/Rev.1/Amend.1 of 24 July 1992 which deals with disciplinary measures. Paragraph 4.4 of the Personnel Directive provides that cases that are likely to lead to the application of disciplinary measures vary in nature and degree of seriousness but that every effort should be made to maintain consistent patterns of disciplinary action for similar types of offences. Paragraph 4.5 provides that disciplinary measures should normally be imposed in a progressive fashion as outlined in paragraph 6. The specific disciplinary action need not follow the programme sequence as outlined but will depend on the particular circumstances of the case. Paragraph 6 then sets out five forms of disciplinary measures in order of severity, starting with written censure followed by suspension without pay, demotion, termination for misconduct and, finally, summary dismissal. It is apparent from the documentation that the Applicant had a previously unblemished record. The decision of the Respondent to terminate his appointment in a summary fashion accordingly could be equated with the fifth and final measure as set out in paragraph 6 above. It was also a decision which

was markedly more severe than the decision made in relation to the Applicant Najia.

XIX. Accordingly, the Tribunal is satisfied that the decision to terminate the appointment of the Applicant Husary was very severe, especially when one contrasts his "dereliction of duty" against the finding made by the BOI in relation to the Applicant Najia who was dealt with by a mere transfer and demotion. This is doubly so when one contrasts the finding made against the Applicant Husary (i.e. the failure to report a conversation which he says he did not believe was true) against the implicit finding made by the BOI in relation to the Applicant Najia (i.e. that he was fully aware of corrupt practices within the Technical Division and that he failed to report them). To this there may be added the point submitted by the Applicant Husary, namely that the matter which he failed to report to his superiors had earlier been placed into the public arena and accordingly was known to his superiors. That matter had been made known in more specific detail in articles published in the public press, and it is alleged that this publicity was given well before the conversation which had occurred between the above-mentioned contractor and the Applicant Husary. The BOI is unable to find a date upon which the conversation is alleged to have taken place, although this issue was raised by the Applicant Husary in correspondence before the JAB was convened. If there had been evidence to show that the conversation had predated the press publicity one would imagine that the Respondent would have sought to adduce this evidence or to have made this point before the JAB.

XX. The Applicant Husary appealed to the JAB. The JAB noted that the decision to terminate the Applicant's services in the interests of the Agency under Area staff regulation 9.1 was solely based on the findings of the BOI. It concluded that based on the evidence before the BOI the Applicant's failure to report the conversation with the contractor did not warrant termination in the interests of the Agency and it expressed the opinion "that the [Applicant did] not deserve such harsh disciplinary measures". It unanimously recommended that the decision appealed against be reviewed.

XXI. In his letter to the Applicant of 9 April 1997, the Commissioner-General stated, inter alia, as follows:

> "...
>
> Ordinarily, I would agree with the Board's perception as to the consequences of failing to report a conversation, however, the subject matter of the conversation, namely that a staff member was receiving payments from a contractor associated with an UNRWA contract was of such a nature that it should have prompted you to report the incident so that it could be properly investigated. Your explanation, that you did not take the conversation seriously, has proved to be a serious error of judgement as evidenced by the finding of serious misconduct by the Board of Inquiry which the Joint Appeals Board has in relation to two other staff members, accepted.
>
> ..."

XXII. The Tribunal notes that the Commissioner-General's views were partially influenced by hindsight. This is apparent from his statement that the Applicant Husary's failure to report the conversation proved to be a serious error of judgement as evidenced by the findings of serious misconduct by the BOI. In addition, the Tribunal notes the description of the Applicant's conduct as "a serious error of judgement". The Tribunal is satisfied that a single error of judgement, no matter how serious, in relation to a person with an unblemished record, would not ordinarily result in or merit such a loss of confidence as would justify termination amounting to summary dismissal. The Tribunal further notes that the wheels had been put in motion by the decision initially made by the DUAL who had selectively quoted from the Applicant Husary's evidence which put him in an unduly unfavourable light. The DUAL had noted that the Applicant indicated that he did not wish to interfere with another man's business, but he failed to quote the further explanation that he had not believed the allegations and considered them to be nonsense.

The Tribunal would not normally interfere with a decision to terminate an appointment by reason of a loss of confidence, unless there was convincing evidence that the decision was substantively or procedurally defective or motivated by some improper motive.

In this case, it is satisfied that the decision taken in relation to this Applicant was so excessively harsh as to warrant setting it aside, particularly when contrasted with the measures which were taken against the Applicant Najia and when one considers the Applicant Husary's full reasons for having failed to make such a report. One cannot gainsay the Applicant's evidence that he did not believe the allegations and considered them to be nonsense. The Tribunal further considers that a loss of confidence such as is claimed by the Respondent as grounds for his decision can hardly be justified, in the light of the Respondent having characterized the Applicant Husary's offence as merely a serious error of judgement.

The Tribunal has concerns and reservations as to whether the findings of the BOI adverse to the Applicant, namely his failure to report the contractors allegations to his superiors, should be characterized as serious misconduct, particularly when it has been described by the Respondent as, in hindsight, a serious error of judgement. The Tribunal is of the opinion that it would have been more appropriate for the Respondent to view it as a performance matter appropriately dealt with by administrative action as done in the case of the Applicant Najia. Had it been dealt with as a performance matter, the Tribunal considers it highly unlikely that it would have resulted in the termination of the Applicant's appointment.

XXIII. For the foregoing reasons, the Tribunal orders:

(a) That the pleas of the Applicants Abdul Halim and Najia are rejected in their entirety;

(b) Reinstatement of the Applicant Husary in a post equivalent to the status or rank of the post which he formerly held;

(c) Should the Respondent decide against reinstatement of the Applicant Husary, it orders that he be compensated in an amount equivalent to two years' net base salary at the rate in effect on the date of separation; and

(d) Rejects all other pleas, including the request for costs and expenses.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary

United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/928
30 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 928

Case No. 1015: ABDULHADI ET AL.

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Suheil Ahmed Abdulhadi, Mohammed Deeb Salameh and Bassem Mahmoud Khader, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 10 April 1998, the Applicants filed an application requesting the Tribunal to order:

99-37900

> [That they be provided with] minutes of conversation taken on the subject between the FOD and the ... Applicant [Abdulhadi].

...

i. [Rescission of the] decisions [terminating them].

ii. [Reinstatement of the] Applicants to duty effective the date of their suspension, and considering the period of their cessation, as a special leave with full pay plus due interest.

iii. [That] should Respondent refrain from reinstating Applicants, [they should be compensated] for their due salaries until judgement has been ordered, plus a compensation for the severe injury caused to Applicants, to be paid in US dollars at the rate available to UN [staff] at the time of their separation.

iv. Payment of retirement benefits due by virtue of long years of service reaching 32 years, and attaining age of retirement, which were denied to ... Applicant [Salameh] because of his termination for misconduct.

v. Payment of counseling fees and secretarial expenses estimated at US$ 1,800."

Whereas the Respondent filed his answer on 30 September 1998;

Whereas the Applicant filed written observations on 7 March 1999;

Whereas the facts in the case are as follows:

The Applicant Abdulhadi entered the service of UNRWA on 20 September 1973, on a temporary indefinite appointment as an Area staff member, as Teacher "B" Mathematics at Falouja School, Damascus Area in the Syrian Arab Republic (SAR). Effective 25 July 1985, he was transferred from the post of School Supervisor (Mathematics), Damascus Area, to the post of Area Officer, South (AO(S)), grade 13. Effective 1 August 1986, he was promoted to the full grade of his post (grade 14).

The Applicant Salameh entered the service of UNRWA on 1 September 1964, on a temporary indefinite appointment as an Area staff member, as Clerk "D" in the Damascus Area Office, SAR. On 28 May 1994, he was advised that his post of Area Registration and Distribution Officer had been reclassified to Registration Clerk (RC), grade 07. The Applicant would, however, retain his existing grade (08).

The Applicant Khader entered the service of UNRWA on 19 June 1985, on a temporary indefinite appointment as an Area staff member, as Area Food Supervisor "C" in the South Area, SAR. On 1 January 1991, he was transferred to the post of Welfare Worker at the Area Office, South, grade 06, without any change in grade or salary. In 1992, the post of Welfare Worker (grade 07) was reclassified to Social Worker (grade 09). Effective 1 July 1994, the Applicant was promoted to grade 07.

On 25 April 1995, following reports of irregularities in the Special Hardship Programme in Dera'a and a substantial shortage of flour after a distribution of rations in that city, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status (SHS) to Palestine refugees in Dera'a and the procedures of UNRWA's distribution system.

On 21 May 1995, after hearing 70 hours of testimony the BOI submitted a detailed report to the Director of UNRWA Affairs. The BOI concentrated its efforts on ascertaining who was responsible for the shortage in commodities at Dera'a and whether the shortage was in any way linked to the procedures for distributing SHS to refugees. The BOI discovered that there was a link between the two matters, principally because of the disorder in procedures and the lack of internal controls leading up to granting of SHS and the notification thereof to the beneficiaries, as well as the lack of supervision in this process.

The BOI noted a number of irregularities: some beneficiaries were not notified until months later that they had been granted SHS; Special Hardship Cases (SHC) rolls contained the names of some 400 refugees whose dates of birth were in the 19th century and very early in the 20th century, implying that deceased beneficiaries were kept on the rolls so their rations could be sold off for personal gain; failure to update the distribution lists by computer which allowed for substantial theft of rations to occur; and, failure by the responsible staff (in particular, the RC and the Area Relief and Social Services Officer (ARSSO)), to register all new SHC and distribute the proper ration cards which allowed for distribution of rations to

individuals not entitled to them. In addition, the BOI noted that close personal relationships between Field Office staff and certain staff at the South Area allowed improprieties to go unnoticed.

The BOI was of the opinion that carelessness in following basic office procedures, the non-observance of Agency rules and regulations, and a total lack of supervision of staff both from the Field Office and particularly from the AO(S)), created a perfect climate of confusion which allowed abuse of the distribution system. It permitted wholesale fraud through staff taking rations for personal gain and converting them to cash by selling them to merchants and giving and/or selling them to other staff. Also, the BOI found that the reporting lines in the Department of Relief and Social Services (especially between the ARSSO and the Field Eligibility and Registration Officer, the Field Welfare Officer, the RC and others) were very blurred.

In general, the overall picture of the South Area, as viewed by the BOI, was one of rampant and pervasive dishonesty and deviousness that reached across the entire spectrum of staff. A fair characterization of the staff would be to put them into two categories: those who participated in the dishonesty and those who were aware of it. The BOI ascertained that this was how the Agency's operations were perceived by the refugees.

With respect to the Applicant Abdulhadi (the AO(S)), the BOI concluded in paragraph 4.2.5 of the report that he was "guilty of gross negligence (his lack of knowledge over activities within his Area would indicate that he only acted as a 'mailbox' between the Field Office and the staff of the Area Office) in carrying out his responsibilities, as well as malfeasance for either participating in the misconduct or knowingly allowing it to continue in his Area."

With respect to the Applicant Salameh (the RC), the BOI concluded in paragraph 4.1.1 of the report as follows: "Long the king pin of distribution in the South Area, the RC

continued to effect the distribution of commodities for SHC after the reorganization of the Relief and Social Services Department. Thereafter even when distribution was turned over to [the] Supply Department ... he continued to be involved in distribution with the assent and approval of the AO(S) ..." The BOI further added in paragraph 4.1.4 of its report that "[i]t was clear to the BOI beyond a reasonable doubt that by manipulating distribution, the lists of SHC, and other control systems, the RC was siphoning-off commodities in the South Area for a very long time ..." Additionally the BOI mentioned in paragraph 4.1.5 of its report that there were indications that the RC had been demanding "bribe money" from the refugees.

Regarding the Applicant Khader (Social Worker), the BOI stated in paragraph 4.5.1 that he "is the brother of the largest merchant in Dera'a dealing in SHC ration purchasing/ selling (and he was the only person allowed to attend the distributions, presumably to facilitate the exchange of rations/ration cards to the merchant) ..." The BOI also inferred "that his particular conduct was very improper and [found that] he actively participated in the misconduct in the South Area. ..."

On 24 May 1995, the Officer-in-Charge (OIC), UNRWA Affairs, SAR, informed the Applicants Abdulhadi and Khader, by separate letters, that they were each suspended from duty without pay effective that day pursuant to Area staff rule 110.2 pending the outcome of further investigation into the charges against them. On the same day, the OIC advised the Applicant Salameh (who had been placed on suspension with pay effective 30 April 1995) by another letter that, based on the investigations to date, it had been decided to convert his suspension from duty with pay to suspension from duty without pay effective that date pending further investigation.

The Applicant Abdulhadi

On 13 June 1995, the Field Administration Officer (FAO), SAR, who was also

Chairman of the BOI, advised the Director of Administration and Human Resources, of further evidence against the Applicant Abdulhadi causing the BOI to believe "categorically that the AO(S) received a bribe in exchange for an appointment as well as selling an Agency shelter". The FAO therefore recommended that the termination of the Applicant Abdulhadi "be for misconduct rather [than] in the interest of the Agency."

On 17 June 1995, the FAO informed the Senior Officer of Administration and Human Resources that "[g]iven the mores of the culture within which we work ... it would be reckless on the part of the BOI to divulge the name of [the person who had accused the Applicant Abdulhadi of receiving bribes] ..." The FAO added "[m]oreover, either the allegation of bribe receiving or that of selling an Agency installation is each in its own right sufficient to establish grounds of termination for misconduct under staff rule 10.2, at the very least."

By letter dated 19 June 1995, the Director of UNRWA Affairs advised the Applicant Abdulhadi that effective close of business that day, his appointment was terminated for misconduct under Area staff regulation 10.2 and Area staff rule 110.1. The reasons given by the Director of UNRWA Affairs were the afore-mentioned findings of the BOI regarding receipt of bribes and selling an Agency installation, as well as the Applicant's having allowed the irregularities relating to the SHC programme in the South Area to continue and his negligence in carrying out his responsibilities as AO(S).

On 1 July 1995, the Applicant Abdulhadi wrote to the Director of UNRWA Affairs requesting reversal of the decision to terminate him, alleging that the decision was flawed in several respects. On 27 July 1995, the OIC advised the Applicant Abdulhadi that he had again reviewed the decision to terminate him and saw no reason to change the decision.

On 13 August 1995, the Applicant Abdulhadi lodged an appeal with the Joint Appeals Board (JAB).

On 19 January 1997, the JAB transmitted it report to the Commissioner-General. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

20. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. The Board noted that the Administration's decision to terminate the Appellant's appointment for misconduct was based on the fact that the Appellant was involved in the Special Hardship Cases irregularities including the distribution of rations.

B. The Board also noted that the Appellant admitted to the Board of Inquiry that he knew that the deceased persons were still carried on the Special Hardship Cases rolls. He also admitted that he knew the Registration Clerk had 'Losses' at the end of each distribution.

C. The Board took note of the Appellant's admission that he had been receiving rations several times from the registration clerk, which he said [he] gave to a poor neighbour.

D. Moreover, the Board noted that the Appellant was completely aware of the conversion of Agency rations by the Registration Clerk.

E. Based on the above, the Board believes that the Administration's line of action in dealing with this case runs in conformity with the Agency's moral and ethical integrity.

F. However, the Board found no evidence relating to the two allegations of bribe and selling an Agency installation and accordingly dismisses both allegations.

IV. RECOMMENDATION

21. In view of the above and without any prejudice to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed."

On 10 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Abdulhadi and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that, except for the findings as to the bribe and the 'sale' of a shelter (for which the Board found no evidence), the Board of Inquiry's findings were soundly based and justified the disciplinary action taken against you. The Board recommended that your appeal be dismissed.

I disagree with the Board's finding that there was no evidence before the Board of Inquiry that you asked for and received a bribe and that you 'sold' a shelter. Evidence to that effect was given to the Board of Inquiry. However, I agree with the balance of the Board's conclusions and its recommendation and I accordingly dismiss your appeal."

The Applicant Salameh

By letter dated 12 June 1995, the Director of UNWRA Affairs advised the Applicant Salameh that effective close of business on 24 May 1995, he had decided to terminate the Applicant's appointment for misconduct under Area staff regulation 10.2 and Area staff rule 110.1. The reasons given by the Director of UNRWA Affairs were the findings of the BOI, which noted that the Applicant Salameh had participated in the conversion of Agency SHC rations for personal use as well as his having manipulated the SHC lists and ration cards. The Director of UNRWA Affairs also cited the Applicant's attempt to cover up the loss of commodities in the March 1995 distribution. He stated that the Applicant's conduct was incompatible with the status of an UNRWA staff member.

On 22 June 1995, the Applicant Salameh wrote to the Director of UNRWA Affairs citing alleged flaws in the composition of the BOI and its proceedings and requesting that the decision to terminate his appointment be reversed. On 19 July 1995, the BOI issued a supplement to its report, detailing indications that the Applicant Salameh had visited SHC after his suspension "apparently with a view towards subverting the BOI's search for the facts". The OIC advised the Applicant Salameh, on 24 July 1995, that he had reviewed the decision to terminate him and saw no reason to change it. On 29 July 1995, the Applicant Salameh lodged an appeal with the JAB against his termination for misconduct.

Subsequently on 7 August 1995, the OIC advised the Applicant Salameh that as a result of newly discovered evidence of, amongst other things, the Applicant's attempt to cover up previous misconduct after his suspension, it had been decided to revoke his termination for misconduct under Area staff regulation 10.2 and summarily dismiss him under Area staff regulation 10.3, effective close of business 24 May 1995. On 9 August 1995, the Applicant Salameh wrote to the Commissioner-General requesting an independent review of his case. The OIC advised the Applicant, on 24 September 1995, that he had reviewed the circumstances of the case and saw no reason to change the decision to summarily dismiss the Applicant.

The JAB transmitted its report to the Commissioner-General on 19 January 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"**EVALUATION AND JUDGEMENT**

21. In its deliberations, the Board examined all documents before it, including the Appellant's personal file, and came out with the following:

> A. The Board noted that the Administration's decision to terminate the Appellant's appointment, on grounds of misconduct, was utterly based on the fact that the Appellant was involved in a scheme which allowed for the misappropriation of Agency commodities destined for Special Hardship Cases.
>
> B. As a result, the Appellant was informed that an investigation of this charge was being made and based on the outcome of this investigation the Appellant was suspended from duty without pay.
>
> C. In the Director of UNRWA Affairs' ... letter ... dated 12 June 1995, the following findings by the Board of Inquiry, were given as the basis for Director of UNWRA Affairs' decision to 'terminate [the Appellant's] appointment with the Agency for misconduct under the staff regulation No. 10.2 and Area staff rule No. 110.1 effective COB [close of business] on 24 May 1995':

1. Having actively participated in the conversion of the Agency Special Hardship Case rations for personal use; and

2. Manipulated the list of Special Hardship Case and ration cards;

3. Attempted to cover up the loss of commodities on the March 95 distribution.

D. The Board is convinced that the Appellant remained, de facto, involved in the distribution of commodities after May 1994 despite the fact that he had formally no further responsibility for the distribution consequently the reclassification of his post. The Appellant admitted to have attempted to conceal the shortages of commodities listed in the report of the Board of Inquiry clearly because a substantial shortage existed before the distribution in March 1995 took place, and the Appellant was responsible for this loss.

E. The Board also is convinced by the available documents that the Appellant controlled the distribution of Special Hardship Case ration cards and in some cases manipulated this procedure by e.g. delaying the handover of cards to recipients or maintaining names of dead persons on the distribution list.

F. In the light of the above, the Board finds the disciplinary sanction imposed (i.e. termination for misconduct under staff regulation No. 10.2 and Area staff rule No. 110.1) appropriate and corresponding to the findings and the evidence thereof.

22. The Board noted that the report of Board of Inquiry was dated 21 May 1995, whereas the supplement to the Board of Inquiry's report was dated 19 July 1995. However, the Board failed to find any document indicating an official request to re-open the investigation after the report's submission neither by the same Board of Inquiry nor by a new one. In this connection the Board draws attention to the Director of UNRWA Affairs, SAR, Strictly Confidential letter ... of 1 June 1995 in which a new Board of Inquiry was formed to investigate the case of the Central Area.

...

IV. RECOMMENDATION

28. In view of the foregoing and without any prejudice to any party, the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the

administrative decision of termination for misconduct under staff rule 110.1.

However, in view of the fact that the investigation did not establish sufficient evidence for summary dismissal and due to lack of authority for extending the investigation beyond 21 May 1995, the Board recommends that this decision of summary dismissal be cancelled."

On 11 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Salameh and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the Board of Inquiry's initial findings of fact were supported by evidence and that the termination of your services for misconduct was appropriate. In relation to the substitution of summary dismissal for termination for misconduct, the JAB took the view that once the Board of Inquiry had submitted its report, without further instructions from the Field Director, there was no legal basis upon which it could continue investigations. Further, the JAB questioned the credibility of the further evidence against you, some of which was given by a man who is apparently psychotic. Accordingly, it recommended that the decision to change the basis of the termination of your services to summary dismissal be reversed.

I agree with the Board's conclusions regarding the decision to terminate your appointment for misconduct. In relation to the decision to change the basis of the termination of your services, I do not agree that the Board of Inquiry cannot make findings on further evidence presented to it after it has submitted its report. Indeed, it would be inappropriate for the Board of Inquiry to ignore evidence of any staff member's wrongdoing. However, in relation to the sufficiency of the further evidence, I am prepared to accept the JAB's views and accordingly I accept the Board's recommendation and allow your appeal insofar as it relates to the decision to change the termination of your services from misconduct to summary dismissal, but otherwise dismiss your appeal. You will be contacted by the Field Administration in relation to the implementation of my decision."

The Applicant Khader

In a "Note for the Record" dated 25 May 1995 by the Secretary of the BOI, allegations were recorded that the Applicant Khader had attempted to remove a file

concerning the Cash Assistance Programme after he was suspended from duty in May 1995. Additionally it was alleged by another Social Worker, that after the said suspension the Applicant had visited her and asked her to give certain evidence in his favour that he had not been present at the last distribution. On 20 June 1995, the Director of UNRWA Affairs advised the Applicant Khader that based on the findings of the BOI, which noted that the Applicant had facilitated transfers of SHC and their rations to merchants in his family, as well as the Applicant's attempts to interfere with the investigations, his appointment was being terminated in the interest of the Agency, under Area staff regulation 9.1 and Area staff rule 109.1, effective close of business that day.

On 11 July 1995, the Applicant Khader requested the Director of UNRWA Affairs to reverse the decision to terminate him, alleging that the charges against him were "imprecise and not correct". The OIC responded to the Applicant's letter on 8 August 1995, stating that he had reviewed the administrative decision concerned and saw no reason to change it.

On 15 August 1995, the Applicant Khader lodged an appeal with the JAB. The JAB transmitted its report to the Commissioner-General on 16 January 1997. Its evaluation, judgement and recommendation read as follows:

> "**III. EVALUATION AND JUDGEMENT**
>
> 18. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:
>
> A. The Board noted the sworn statement of Social Worker ... in which he tried to influence her, in order to testify that he was not present at the Distribution Centre at a given date. However, there is no evidence incriminating him of conducting transactions during his presence at the Distribution Centre.
>
> B. As for the Appellant's attempt to take the Cash Assistance Programme file along with the personal belongings from his office, there is no mention whether this particular file was examined and incriminating evidence found therein.

C. Based on the above, the Board could not find sufficient evidence against the Appellant

IV. RECOMMENDATION

19. In view of the foregoing, and without prejudice to any party, the Board unanimously makes its recommendation that the Administration's decision appealed against, be reversed."

On 20 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Khader and informed him, inter alia, as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board appeared to note that you had lied to the Board of Inquiry about being present at the Special Hardship Case Distribution in Dera'a in March 1995, attempted to suborn a witness and had attempted to take official documents away from the Agency after your suspension. However, the Board stated that there was no evidence that you had conducted any improper transactions at the subject distribution or that the documents which you attempted to take away were themselves evidence of any wrongdoing on your part. Accordingly, the Board recommended that your appeal be upheld and that the administrative decision to terminate your appointment in the interest of the Agency be reversed.

While I agree that there is no strong evidence that you were guilty of misconduct at the Special Hardship Case distribution, you did lie to the Board about your presence there, you did attempt to suborn a witness and attempted to take official Agency documents away from [your] office after your suspension from duty. These acts, connected with the Board of Inquiry's investigations, justify the administrative decision taken. Therefore, I do not accept the Board's conclusions and recommendation and I accordingly dismiss your appeal.

...."

On 10 April 1998, the Applicants filed with the Tribunal the application referred to earlier.

Whereas the Applicant Abdulhadi's principal contentions are:

1. He was not negligent in carrying out his responsibilities as AO(S) and consequently the decision to terminate his appointment is arbitrary.

2. He was denied due process when the BOI refused to identify a witness who had made allegations against him. It is not unfair to conclude that the charges were wholly fabricated and that the BOI was an integral part of it. Therefore, the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and influenced by extraneous factors.

Whereas the Applicant Salameh's principal contentions are:

1. He did not actively participate in the conversion of SHC rations for personal use, or manipulate the list of SHC or tamper with ration cards in an attempt to cover up the loss of commodities at the March 1995 distribution. Therefore the decision to terminate his appointment was arbitrary.

2. The proceedings of the BOI were flawed in that it never confronted him with two out of the three allegations that were made against him and that consequently the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and extraneous factors.

Whereas the Applicant Khader's principal contentions are:

1. He never attempted to interfere with the BOI's investigation nor did he lie to it. He did not engage in any misconduct and consequently his termination was arbitrary.

2. The findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and the influence of extraneous factors.

Whereas the Respondent's principal contentions are:

1. The decision to terminate each appointment was a proper exercise of discretion by the Respondent based on the findings of the BOI.

2. None of the three Applicants has provided any evidence to prove that the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice or other extraneous factors.

The Tribunal, having deliberated from 8 to 30 July 1999, now pronounces the following judgement:

I. The Applicants Abdulhadi, Salameh and Khader have filed a joint application. Because the three Applicants' cases arise from related facts and raise similar issues, the Tribunal orders joinder of the cases.

Suheil Ahmed Abdulhadi

II. The Tribunal is satisfied that there was sufficient evidence before the BOI with respect to the Applicant Abdulhadi, to justify its findings that he had failed in his duties as AO(S). In its report dated 21 May 1995 to the Director of UNRWA Affairs, SAR, the BOI found that the Applicant Abdulhadi was aware of many irregularities in the Special Hardship Programme, such as dead people being listed on the Special Hardship Rolls, the RC (the Applicant Salameh) giving away rations to refugees who were not registered as SHC and receiving rations from the RC himself and from merchants holding ration cards. And yet, despite having the duty to monitor and administer the Agency's programmes in the South Area, the Applicant Abdulhadi took no action to stop such irregularities. The BOI also concluded that the Applicant Abdulhadi was aware of the conversion of rations by the Applicant Salameh and was grossly negligent in the performance of his duties.

III. The Tribunal wishes to express its concerns and record its observations concerning two matters which arise from the investigations conducted by the BOI and in the

Respondent's consideration of the BOI's reports. The first relates to the manner in which the BOI dealt with the allegation that the Applicant Abdulhadi had received a bribe in exchange for an appointment with UNRWA. The BOI decided not to inform the Applicant either as to the identity of the person who had made this allegation or of any specific detail thereof, because of the complainant's employment position vis-à-vis the Applicant and because it feared possible retribution against such person. It considered there was a general culture of retribution prevailing. The Applicant Abdulhadi was merely asked if he had ever received a bribe in exchange for an appointment and his denial was noted. The Chairman in his letter of 17 June 1995 to the Senior Officer, Administration and Human Resources, UNOV, stated that "[i]t would have added very little, if anything, to the question, if it included the name of the accuser and the post". The Tribunal takes issue with the Chairman's position and finds that the dearth of information provided to the Applicant regarding this allegation denied him due process. For instance, had he known the identity of his accuser he might have been able to establish that his accuser was far from impartial, honest or credible, or that his accuser might have had a motive for fabricating a false allegation against him. Had the Applicant been given details of the allegation he might have been able to establish that he had no role or influence in the appointment in question or might have been able to satisfy the BOI that he was not present on the occasions when it is alleged that the bribe was solicited or paid. These are just a few grounds of defence that might or might not have been available to the Applicant. There might have been others. We will never know. Suffice it to say that the Tribunal is satisfied that the Applicant Abdulhadi was not afforded due process in relation to this allegation. The BOI ought not to have found that this allegation had been established and the Respondent ought not to have taken it into account when he decided to terminate the Applicant Abdulhadi's appointment for misconduct.

The second observation of the Tribunal from the same letter of the Chairman of the BOI of 17 June 1995, causes the Tribunal even greater concern. The Chairman wrote: "Moreover, either the allegation of bribe receiving or that of selling an Agency installation is

each in its own right sufficient to establish grounds of termination for misconduct under staff rule 10.2 at the very least." The Tribunal finds this to be an alarming proposition. The Tribunal appreciates that the letter of 17 June 1995 must be considered in the context of the Chairman's earlier letter of 13 June 1995 to the Director of UNRWA Affairs, in which he had stated that insofar as those allegations were concerned the BOI had found the evidence of his accusers credible whereas they found that the evidence of the Applicant Abdulhadi was not. However, that proposition displays a profound lack of appreciation of or a misunderstanding of due process. An allegation cannot by itself be grounds for termination for misconduct, no matter how serious it may be.

The Tribunal is of the opinion that neither the manner in which the bribery allegation was addressed by the BOI nor the manner in which the bribery and the sale of the installation were commented on by the Chairman of the BOI in his said letter nor his suggestion that those very allegations would justify dismissal for misconduct, should have been taken into account by the Commissioner-General when determining how to act in the matter. The JAB had concluded that the findings of the BOI as set out in its original report were well-founded and observed, quite correctly in the view of the Tribunal, that many of the acts and omissions found by the BOI to constitute negligence or misconduct on his part, had in fact been admitted by the Applicant Abdulhadi.

However, the JAB also concluded that there was "no evidence relating to the two allegations of bribe and selling an Agency installation" and it had accordingly dismissed both allegations. The Tribunal believes that it was likely in the circumstances that the JAB, in relation to those allegations, had intended to convey that there had been no receivable or admissible evidence and that no due process had been afforded the Applicant Abdulhadi. However, the Respondent interpreted the words literally and apparently suspected that the JAB had omitted to read the papers concerning the evidence which had been given. Accordingly, the Respondent rejected the JAB's conclusion on this point and took those findings into account when deciding to terminate the Applicant Abdulhadi's appointment for

misconduct.

IV. The Tribunal considered that these BOI findings should not have been taken into account for the reasons stated. Nonetheless, it agrees with the JAB that there was ample evidence to justify its findings under other headings of misconduct. Thus, the Tribunal does not find it appropriate to disturb the Respondent' decision to terminate the Applicant Abdulhadi's appointment for misconduct. It is to be noted in this context that the JAB had recommended upholding that decision of the Administration and dismissal of Applicant Abdulhadi's appeal, notwithstanding that it had dismissed the charges relating to bribery and the sale of the shelter. The Applicant Abdulhadi had occupied a senior position in the Agency, which relied upon his integrity and judgement. The Tribunal rejects his bizarre and untenable defence that he had no duty either to prevent irregularities and misappropriation or to report them. The Tribunal finds that the Respondent's approach to the evaluation of the JAB was misconceived. It also finds that his reliance on the findings of the BOI which had demonstrated a lack of appreciation as to what constituted "due process" and which had stated that the very existence of an allegation could justify termination was misconceived. The Tribunal holds that the decision to terminate the Applicant Abdulhadi's appointment for misconduct nevertheless was wholly justified and would have been made even if the bribery allegation and the sale of the installation allegation had not been taken into account. His conduct, as described in findings which are not impugned, clearly justified the decision to summarily terminate his appointment.

V. Otherwise, the Tribunal is satisfied that the Applicant Abdulhadi was afforded due process and that the findings adverse to him were properly made on cogent evidence which the BOI was entitled to accept. The Tribunal rejects the Applicant Abdulhadi's assertions of *"Cruel extraneous factors, and sheer prejudice"* on the part of the Respondent and other like unsubstantiated allegations on the grounds that there is no evidence to support any of them.

Once again (as in case No. 1001, Al-Ansari, and other cases arising out of the investigations of the same BOI), the Tribunal rejects allegations of the existence of unproven sinister and malevolent forces *"outside politico-professional boards", "nepotism"* and the like on the grounds that they are similarly unsupported by evidence. The Tribunal repeats that it acts on evidence, facts found from evidence and inferences drawn from properly established facts. It will not act on bald allegations that do not assume the status of facts. The information presented does not add credibility by repetition.

Mohammed Deeb Salameh

VI. The Applicant Salameh was formerly the RC, Area Office, South Area. Prior to May 1994, as Area Registration and Distribution Officer, the Applicant Salameh was responsible for the distribution of rations to refugees; however, such responsibility was excluded from his post after May 1994. The Applicant Salameh maintains that he continued to distribute rations because the Distribution Team Leader (DTL) to whom his duties had been assigned was inexperienced, and that the AO(S) requested that the Applicant Salameh continue with this work as an Assistant to the DTL. Thus, after May 1994, the Applicant Salameh remained in a position of considerable trust regarding the proper distribution of food rations destined for SHC.

VII. The Tribunal is satisfied that the finding of the BOI that he abused that position for personal gain was based on cogent evidence that the BOI was entitled to accept. Likewise, the finding of the BOI that the Applicant Salameh not only assisted the DTL but, in fact, continued to run the distribution itself, including the distribution of March 1995, also was based on cogent evidence that the BOI was entitled to accept. The Tribunal finds no grounds for disturbing those findings.

VIII. Having reviewed the Report of the BOI, the Director of UNRWA Affairs, by letter of 12 June 1995, advised the Applicant Salameh of the decision to terminate his appointment with the Agency for misconduct under Area staff regulation 10.2 and Area staff rule 110.1 effective close of business on 24 May 1995.

Subsequently, further evidence resulted in the mode of the Applicant Salameh's termination being changed to summary dismissal. However, the Commissioner-General accepted a JAB conclusion regarding the weight of that additional evidence and restored the basis of the Applicant Salameh's termination from "summary dismissal" back to "termination for misconduct". In the circumstances the Tribunal does not consider it appropriate or necessary to address the complaints made on behalf of the Applicant Salameh in relation to those subsequent findings as no adverse consequence to the Applicant Salameh has resulted therefrom.

IX. The original findings of the BOI adverse to the Applicant Salameh established a pattern of misconduct on a significant scale. The Tribunal accepts that those findings were made on cogent evidence and that the Applicant Salameh was afforded due process in relation to the conduct of the investigations by the BOI. The Tribunal will not interfere with those findings. Whilst the Tribunal accepts the Applicant Salameh's argument that the BOI never put to him the allegation that he had misappropriated rations *"for his personal use"*, the gravamen of the finding was that he had misappropriated the rations. It matters not whether it was for his personal use or otherwise. The Tribunal will not set aside that finding.

X. The Respondent conceded that the allegation that the Applicant Salameh had manipulated the list of SHC and ration cards, although supported by other evidence, had not been put to him by the BOI. Accordingly, the Respondent no longer relies on that finding as a basis for the Applicant Salameh's misconduct. The Tribunal is, however, satisfied that the BOI's other findings of misconduct by the Applicant Salameh, which were in turn accepted by

the JAB, were supported by cogent evidence and that there was no unfairness of procedures in the BOI's investigations which led to those other findings. The Tribunal is satisfied that those findings justified the disciplinary action which was taken against him.

XI. As to the other allegations of want of process, unfair procedures, bias or prejudice made by the Applicant Salameh, the Tribunal is satisfied that there is no cogent evidence to support any of them. The claims based on such allegations are rejected. The JAB was of the opinion that the BOI's initial findings of fact concerning the Applicant Salameh were supported by evidence and that the termination of his services for misconduct was appropriate. However, the JAB concluded that the BOI had no power to continue its investigations once it had submitted its initial report. It also expressed doubts as to the credibility of the evidence against the Applicant Salameh in relation to the new or additional allegations. Accordingly, it recommended that the decision which was "summary dismissal" be reversed once again to "dismissal for misconduct".

The Respondent accepted the JAB's findings in relation to termination of the Applicant Salameh's appointment "for misconduct" rather than "summary dismissal". He disagreed, however, with the JAB's reasoning regarding the entitlement of the BOI to continue its investigations. The Tribunal is satisfied that the Respondent was correct in that view. The BOI was entitled to continue its investigations and to submit a supplemental report.

XII. Accordingly, the Tribunal is satisfied that the decision to dismiss the Applicant Salameh from the Agency for misconduct was a proper exercise of the Respondent's authority in accordance with the relevant staff regulation (10.2) and rule (110.1) and that it was not tainted by any bias, extraneous matters or prejudice.

Bassem Mahmoud Khader

XIII. The BOI found that the Applicant Khader actively participated in misconduct in the South Area. It found that the Applicant Khader's brother was the largest merchant in Dera'a purchasing and selling SHC rations, and that the Applicant Khader was the only Social Worker allowed to attend the distributions, presumably to facilitate the exchange of ration cards and rations to him. The BOI found that the Applicant Khader had actively participated in or facilitated the transfer of rations to his brother's business. After the BOI submitted its initial report to the Director of UNRWA Affairs, the Applicant Khader requested and was granted another opportunity to appear before the BOI. At that time, the Applicant denied any improper conduct. The BOI then put to him two allegations concerning his conduct after he had been suspended from duty on 24 May 1995. First, that he had attempted to remove a file from his office. Second, that he had approached another Social Worker to ask her to give certain evidence in his favour.

The BOI rejected the Applicant Khader's denials of those allegations as not credible. After the BOI issued a report in relation to those allegations, the Respondent wrote to the Applicant Khader by letter of 20 June 1995 stating, in part, as follows:

> "On 1 June you appeared before the Board of Inquiry, Dera'a, at your own request. This was your third appearance before the Board. During these proceedings you have given testimony on a number of items including your role in the March 1995 distribution to Special Hardship Cases in the South Area, as well as your denial in the involvement of attempting to take official documents out of the Agency premises after you were suspended. There is ample testimony that you were the only Social Worker in Dera'a allowed to attend and participate in the March 1995 Distribution in Dera'a and as such facilitated transfers of Special Hardship Cases and their rations to merchants in your family. In addition you denied the fact that you made contact with another Agency staff member after suspension with a view towards attempting to oblige her to testify that you were not present at the March 1995 Distribution in Dera'a. We have a written Note For the Record and a sworn statement concerning the facts of your attempts to leave the office premises with official documents relating to financial assistance for refugees and a statement from the staff member regarding contact with that person after your suspension.

> In the light of the above and the fact that the Board of Inquiry did not accept your testimony as credible (and in particular this includes your statements that you are not aware of the market value of each ration, while your brother and father are the largest merchants dealing in UNRWA Special Hardship Case rations in Dera'a) but rather believed the testimony and statements of the other witnesses, you are hereby informed that your appointment is terminated in the interest of the Agency under staff regulation No. 9.1 and Area staff rule No. 109.1 effective close of business on 20 June 1995.
>
> ..."

XIV. On 11 July 1995, the Applicant Khader wrote to the Respondent and sought reversal of the decision to terminate his services. On 8 August 1995, the OIC advised the Applicant Khader that he had reviewed the decision and saw no reason why it should be changed. On 15 August 1995, the Applicant Khader appealed to the JAB. The JAB considered evidence concerning the Applicant's presence at the ration distribution in March 1995 and his alleged subsequent actions to conceal his presence there. The JAB concluded that there was no proof that the Applicant Khader had been involved in the misappropriation of rations and recommended that the administrative decision to terminate his services in the interests of the Agency should be reversed.

In response to the report of the JAB, the Respondent agreed that whilst there was no strong evidence that the Applicant Khader had engaged in improper conduct at the March 1995 distribution, he had lied about his presence at that distribution, had attempted to suborn a witness, and had attempted to take away official documents after his suspension. He expressed the opinion that those acts, connected with the BOI's investigation, justified the decision taken and accordingly he did not accept the recommendation of the JAB.

XV. As the Tribunal has previously stated (see, e.g., Judgements No. 117, Van der Valk (1968) and No. 682, Dabit (1994)), Area staff regulation 9.1 gives the Respondent wide discretion, but his power must be exercised without improper motivation or abuse. The Tribunal has held on many occasions that an Applicant has the burden of proving that an

administrative decision is tainted by prejudice or improper motive and that to discharge that burden he must produce convincing evidence. Thus the Tribunal will not disturb a decision by the Respondent such as the one presented here, unless the Applicant provides convincing evidence that such decision was substantively or procedurally defective or motivated by some improper motive.

XVI. The Tribunal is satisfied that the BOI's findings that the Applicant Khader was an active participant in misconduct, based on his presence at ration distributions attended by his brother, who was the largest merchant involved in selling and buying rations, were justifiable and reasonable and should not be disturbed. Nor will the Tribunal disturb the BOI's reasonable findings that the Applicant had lied to it when he denied being present at the distribution, attempting to suborn a witness and attempting to take a file from his office after he had been suspended from duty. The JAB appears to have accepted that the Applicant Khader had indeed performed these acts but had merely disagreed with the conclusion drawn by the BOI that he was an active participant in the misappropriation of rations.

XVII. The Respondent disagreed with the JAB's ultimate conclusion. Regardless of whether the Applicant Khader's behaviour can be categorized as being associated with the misappropriation of rations, each of the acts which were accepted by the JAB, individually justified the administrative decision to terminate the Applicant Khader's services in the interests of the Agency. The Tribunal is satisfied that that decision was one which the Respondent was entitled to make.

The Tribunal is further satisfied that the Respondent's decision must stand. There is no evidence of any substantive or procedural defect or improper motive. The decision was a proper exercise of the Respondent's managerial discretion.

XVIII. For the foregoing reasons, the application of the Applicants Abdulhadi, Salameh and Khader is rejected in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Kevin HAUGH
Member

Chittharanjan Felix AMERASINGHE
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary